progress in that country; the other, by Mr. M. Emile Vandervelde, which is an analysis of selected problems of industrial reconstruction in Belgium.

The movement to establish international standards for social control of industrial conditions begins a new section of the book. Miss Sophy Sanger applies her knowledge as a former secretary of the British section of the International Association for Labor Legislation in an essay on industrial reforms which were later found in the agenda of the Washington Conference. Arthur Fontaine, now chairman of the governing board of the International Labor Organization, reviews the long struggle to internationalize labor standards. Mr. H. B. Butler, deputy-director of the International Labor Organization, summarizes the problem and work of the Washington Labor Conference under the auspices of the League of Nations. The concluding chapter on the new International Labor Office comes from the pen of the director of the office, Albert Thomas. The former French minister boldly constructs in vivid style the future policy of the office. Useful appendices complete the volume. There is no index.

Mr. Solano is to be commended for his timely effort in making available for the student in the labor field as well as for the practical person of affairs a judicious selection of reliable studies which were suggested when labor gained its international Magna Charta by the creation of the International Labor Organization. Coming so soon after the establishment of that organization, the work is meant to be factual rather than prophetic, suggestive rather than exhaustive. Mr. Solano does not overlook the many obstacles in the attempt to regulate labor internationally but, as he points out in his able introduction, at least the labor sections of the peace treaty for the first time in human history give legal recognition to the ultimate community of interests of wage-earners the world over, who seek a minimum of decent living in place of employment and home. It seems reasonable to state that the adoption of protective standards for labor on an international basis represents an unparalleled unity of purpose and effort in the direction of labor welfare. Mr. Wells, in search of a chapter for his "Outline of History" on "Humanity's Labor Problem," might have found fertile material for his interpretive powers in this collection of writings premised on human labor as a common enterprise. Together with Dr. Ayasawa's and Professor Hetherington's recent publications on "International Labor Legislation," Mr. Solano's book should stimulate research workers to add to these valuable productions in the field of international labor.

S. C. OPPENHEIM

STATE TEACHER'S COLLEGE
KIRKSVILLE, MO.

PATENT LAW. By JOHN BARKER WAITE, Professor of Law in the University of Michigan Law School. Princeton, N. J.: PRINCETON UNIVERSITY PRESS. 1920. pp. viii, 316.

The reported decisions relating to patent causes, which, during the earlier portion of the last century, were comparatively few, have during the past fifty years grown to such proportions as to constitute in and of themselves a distinct and well reasoned body of law of considerable proportions. The law underlying these decisions Professor Waite has condensed into a small volume, which together with the index comprises 316 pages. The primary purpose of the book as stated by the author is that of furnishing a work from which inventors, business men, engineers, lawyers in general practice and all that class of laymen could obtain information concerning their rights with respect to inventions and patents. The book is not intended primarily for patent practitioners, it being pre-

sumed by the author that they, being already trained specialists, have no need for discussion of principles, but may find their source of inspiration in the dry digests of the law.

Professor Waite brings to his task a brilliant mind and one obviously skilled in dialectics and refinements of argument. The whole book gives evidence of the exercise of unusual reasoning powers on the part of the author. It is to be questioned, however, from the utilitarian standpoint as to whether or not this book addressed as it is to the ordinary inventor is not couched in such terms as to be difficult for him to follow. In a work addressed to others than those skilled in the patent law or students of the law, it would seem that a book more dogmatic in character and simpler in its expression would more approximate the needs of the average inventor; that is, that the ordinary person is more interested in the clear and concrete statement of the principle with simple illustrations thereunder as settled by the court than he is in exposition and dialectic refinements.

Thus the first three chapters of the book wander far afield and appear to be given over in large part to speculation and discursiveness, which, however, brilliant and interesting they may be in and of themselves to the practitioner, are out of place in a book addressed to persons other than those acquainted with patent law. One example of such discursiveness is found on page 31 involving the discussion as to "whether a purely *mental process* not involving the manipulation of substance, can be protected by patent as an art". In view of the fact that while the courts are somewhat nebulous as to the exact meaning of the word art, but have nevertheless never sustained a patent for an art or process except where physical instrumentalities were employed, it would seem that a discussion of the question of the patentability of a mere mental process is neither necessary nor profitable and only serves to confuse the persons to whom this book is plainly directed. In any event, the probabilities of any inventor seeking to obtain a patent for a mental process are so remote as to be practically negligible, particularly since as a practical matter any patent attorney in active practice would undoubtedly advise his client without hesitation that no patent could be obtained for purely a mental process, and would refuse to prepare the application therefor.

On page 76, the author states that "lacking in invention" is synonymous with "lacking in novelty". Such statement is confusing to the reader, particularly since the terms are not used interchangeably in the books. A thing to be patentable must not only be an invention but it must be new. Anticipation cannot be predicated upon the prior art except when all of the elements of a patented combination are found in the same description or machine where they do substantially the same work by the same means. It constitutes no anticipation where one or more elements are found in one prior publication, and others in another, and still others in a third; it may or may not, however, constitute invention to combine such elements into one combination. For example, a combination or thing may be new, and yet not an invention because it involves the exercise of mere mechanical skill. Thus it might have been new to supply a lead pencil with a rubber eraser at the end, but no invention was involved, such collocation having been held to be an aggregation.

It is undoubtedly true that in many instances a patent is invalid because lacking both novelty and invention, and that the consideration of the one is more or less involved with the other, but it would seem that to confuse the terms want of novelty and want of invention serves no useful purpose, and so far as the uninformed reader is concerned, involves him in a situation of great uncertainty as to just what his rights are in any given situation.

Another example of discursiveness is the consideration of the case of *The*

Barbed Wire Patent (1892) 143 U. S. 275, 12 Sup. Ct. 443, 450, in connection with the subject of aggregation, where the author states, page 50: "The court called it a combination without discussing its differentiation from unpatentable aggregation." In view of the fact that such case did not involve aggregation at all but merely a patentable combination, there does not appear to have been any occasion or necessity for the court to discuss differentiation from aggregation.

Relative to drawings, the author theorizes on pages 87-90 as to whether or not such drawings are in and of themselves complete evidence of anticipation. In such discussion the author plainly takes issue with the authorities, whom he states are illogical in their conclusions. But however that may be, it is certainly well settled that outside of design patents, published or unpublished drawings do not anticipate a patentable invention. Such being the case surely there is no good reason for bringing the matter of illogical conclusions home to the reader since all he is interested in as a practical man is what the law really is rather than what it ought to be.

Then again the arrangement of the first three chapters of the book appears to be poorly organized. In a book of this character it would seem proper to bring out clearly at the outset, of just what the grant of a patent really consists. This is a very important matter and underlies the whole law of patents and is a question concerning which there is great likelihood of confusion, particularly in view of the fact that even judges have not at all times carefully kept in mind the nature of the exclusive right granted by the patent.

The law is clearly stated in *Bloomer* v. *McQuewan* (1852) 14 How. 539, by Mr. Chief Justice Taney, who says: "The franchise which the patent grants consists altogether in the right to exclude every one from making, using or vending the thing patented without the permission of the patentee". Thus it appears that the Government does not grant any *affirmative* right, but only a *mere right to exclude others* than the patentee from making, using or selling his patented article. It is also important to bring home to the layman that in the United States *only* an inventor can apply for a patent. The reader has, however, to reach page 118 of the book before he discovers this important point. Such matter it would seem should be pointed out to the layman at the very outset.

But however discursive the author has been relative to the first three chapters of the book, the remaining chapters of the book beginning with chapter IV appear to be wholly admirable. Chapter IV relating to persons entitled to patents is very comprehensive and the arrangement is excellent; in particular the difficult subject of joint invention is lucidly handled. This is also the case with chapter V dealing with the loss of a right to a patent, which is brilliant, concise and analytical and shows the author at his best. In chapter VIII the discussion relative to licenses is very illuminating, particularly as to the effect of conditions and restrictions.

In these later chapters the author adheres very closely to the principles settled or fixed by judicial decision and interpretation and the law is on the whole well stated and illustrated. It is to be questioned, however, whether such chapters are written in such language as would be readily understood and comprehended by those other than patent practitioners or students of the law, although it must be admitted that in some instances the very nature of the subject renders it difficult of interpretation. Such difficulty is recognized in the last chapter of the book, in which the author states in effect that there is no branch of the law in which there is so much difficulty in applying legal principles as in the law relating to patents. This is due the author states to the fact that "the essential dissimilarity of sensible circumstance precludes the possibility of rules

and the influence of other precedent cases". We believe, however, that this is perhaps an over statement. No one case under any branch of the law is exactly the same as any other case, and there is always difficulty of applying judicial precedent particularly in complicated cases. What the author undoubtedly means is that the usual patent case is involved and presents a considerable number of issues; so that a patent case would ordinarily exhibit the same difficulty as any case not involving patents and brought for causes of action which were involved and complicated.

All things considered, this book presenting as it does many original points of view, and close analysis of the law, will be invaluable to the patent lawyer and should for this reason be in every library in which provision is made for works on patent law.

EVERETT N. CURTIS

NEW YORK CITY

INTERNATIONAL LAW, a Treatise. By L. OPPENHEIM. Vol. I. Peace. Third Edition. Edited by RONALD F. ROXBURGH. London: LONGMANS, GREEN & Co. 1920. pp. xliii, 799.

Professor L. Oppenheim of Cambridge University died on October 7, 1919, but as the editor of the present volume tells us, by pursuing the practice of making marginal annotations during the war, he left his treatise on International Law revised up to July, 1919. Thus he had completed discussion of some of the provisions of the Treaty of Versailles. The first volume, now offered, has been edited to include material up to May, 1920 by Mr. Ronald F. Roxburgh, a former student of the author. Mr. Roxburgh's additions can be ascertained by noting the date of incidents treated, and by his explanation in the preface, but they are not otherwise distinguished from Oppenheim's text.

Although born and educated in Germany, Professor Oppenheim spent most of his mature life in Switzerland and in England where he was naturalized. Prior to his arrival in England in 1895 his studies had been in jurisprudence and criminal law, but after that time he made international law his major work and in 1905-1906 published a two volume treatise on the subject in English which was at once recognized as standard and went into a second edition in 1912. In 1908 Professor Oppenheim was called to the Whewell Professorship of International Law at Cambridge University to succeed Westlake. The present edition is the third, and the first volume contains 782 pages of text as compared with 582 in the first edition, thus indicating substantial additions.

Professor Oppenheim's training in continental law, later broadened by his contact with the English legal point of view, eminently qualified him to write on international law, and his treatise is characterized by the clarity of its logical basis and the comprehensiveness of its content.

The theoretical propositions which have vexed international law writers are neatly settled by care in definition. Law as enforced by external authority is distinguished from morality enforced by conscience alone (p. 4), and the propriety of classifying international "law" in the former category is made clear. Professor Oppenheim denominates himself a "positivist," rejects "natural law" entirely (p. 116), and considers custom and treaty the only sources of international law (p. 21). The theoretical structure is particularly notable for its insistence that states are the only subjects of international law. Heads of state, diplomatic officers, public and private vessels, individuals, etc. are regarded as its "objects" (pp. 18, 25, 457). The necessary deduction from this, that international law as such cannot be a part of municipal law is asserted with equal strenuousness, though